

MAY 10 2007

PTO/SB/21 (04-07)

Approved for use through 09/30/2007. OMB 0651-0031  
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TRANSMITTAL  
FORM

(to be used for all correspondence after initial filing)

Total Number of Pages in This Submission

10

Application Number	10/553,708
Filing Date	June 16, 2006
First Named Inventor	Stefan Bracht
Art Unit	1615
Examiner Name	
Total Number of Pages in This Submission	10
Attorney Docket Number	RO4101US (#90568)

## ENCLOSURES (Check all that apply)

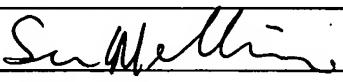
<input checked="" type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached  <input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s)  <input type="checkbox"/> Extension of Time Request  <input type="checkbox"/> Express Abandonment Request  <input type="checkbox"/> Information Disclosure Statement  <input type="checkbox"/> Certified Copy of Priority Document(s)  <input type="checkbox"/> Reply to Missing Parts/ Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers  <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address  <input type="checkbox"/> Terminal Disclaimer  <input type="checkbox"/> Request for Refund  <input type="checkbox"/> CD, Number of CD(s) _____  <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> After Allowance Communication to TC  <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences  <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief)  <input type="checkbox"/> Proprietary Information  <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below):  return postcard receipt; translation of IPEA/409; and cover Letter
Remarks		

## SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	D. Peter Hochberg Co., L.P.A.		
Signature			
Printed name	Sean F. Mellino		
Date	5/4/07	Reg. No.	48,817

## CERTIFICATE OF TRANSMISSION/MAILING

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below:

Signature			
Typed or printed name	Sean F. Mellino	Date	05/04/2007

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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MAY 10 2007

PTO/SB/17 (05-07)

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Effective on 12/08/2004.

Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).

**FEE TRANSMITTAL**  
**For FY 2007**

 Applicant claims small entity status. See 37 CFR 1.27

**TOTAL AMOUNT OF PAYMENT** (\$ 0.00)
**Complete if Known**

Application Number	10/553,708
Filing Date	June 16, 2006
First Named Inventor	Stefan Bracht
Examiner Name	
Art Unit	1615
Attorney Docket No.	RO4101US (#90568)

**METHOD OF PAYMENT** (check all that apply)

Check  Credit Card  Money Order  None  Other (please identify): \_\_\_\_\_  
 Deposit Account Deposit Account Number: 08-2441 Deposit Account Name: D. Peter Hochberg Co., L.P.A.

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

Charge fee(s) indicated below  Charge fee(s) indicated below, except for the filing fee  
 Charge any additional fee(s) or underpayments of fee(s)  Credit any overpayments

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

**FEE CALCULATION****1. BASIC FILING, SEARCH, AND EXAMINATION FEES**

<u>Application Type</u>	<u>FILING FEES</u>		<u>SEARCH FEES</u>		<u>EXAMINATION FEES</u>		<u>Fees Paid (\$)</u>
	<u>Fee (\$)</u>	<u>Small Entity</u>	<u>Fee (\$)</u>	<u>Small Entity</u>	<u>Fee (\$)</u>	<u>Small Entity</u>	
Utility	300	150	500	250	200	100	
Design	200	100	100	50	130	65	
Plant	200	100	300	150	160	80	
Reissue	300	150	500	250	600	300	
Provisional	200	100	0	0	0	0	

**2. EXCESS CLAIM FEES**Fee Description

	<u>Fee (\$)</u>	<u>Small Entity</u>
Each claim over 20 (including Reissues)	50	25
Each independent claim over 3 (including Reissues)	200	100
Multiple dependent claims	360	180

<u>Total Claims</u>	<u>Extra Claims</u>	<u>Fee (\$)</u>	<u>Fee Paid (\$)</u>	<u>Multiple Dependent Claims</u>
_____	- 20 or HP = _____	_____ x _____ = _____		<u>Fee (\$)</u> <u>Fee (\$)</u>

HP = highest number of total claims paid for, if greater than 20.

<u>Indep. Claims</u>	<u>Extra Claims</u>	<u>Fee (\$)</u>	<u>Fee Paid (\$)</u>	<u>Fee (\$)</u>	<u>Fee Paid (\$)</u>
_____	- 3 or HP = _____	_____ x _____ = _____			

HP = highest number of independent claims paid for, if greater than 3.

**3. APPLICATION SIZE FEE**

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

<u>Total Sheets</u>	<u>Extra Sheets</u>	<u>Number of each additional 50 or fraction thereof</u>	<u>Fee (\$)</u>	<u>Fee Paid (\$)</u>
_____	- 100 = _____	/ 50 = _____ (round up to a whole number)	x 250.00	= 0.00

**4. OTHER FEE(S)**

Non-English Specification, \$130 fee (no small entity discount)

Other (e.g., late filing surcharge): \_\_\_\_\_

**SUBMITTED BY**

Signature	<i>Sean F. Mellino</i>	Registration No. (Attorney/Agent)	48,817	Telephone	216-771-3800
Name (Print/Type)	Sean F. Mellino			Date	

This collection of information is required by 37 CFR 1.136. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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**CERTIFICATE OF MAILING**

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Date: 5/4/2007

Sean Mellino

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant : Stefan Bracht  
Serial No. : 10/553,708 (Conf. No. 5800)  
International App. No.: PCT/EP04/003748  
Filing Date : June 16, 2006  
Title : Medical Active Substance Patch With Reduced Optical Conspicuousness on the Skin  
Art Unit : 1615  
Attorney Docket : RO4101US (#90578)  
Commissioner for Patents  
P.O Box 1450  
Alexandria, Virginia, 22313-1450

**LETTER**

Dear Sir:

In order to supplement the filing documents of the above-referenced U.S. national phase patent application, enclosed herewith is a translation of the International Preliminary Report on Patentability (PCT/IPEA/409).

Respectfully submitted,

Date: 5/4/2007

Sean F. Mellino  
Reg. No. 48,817

D. Peter Hochberg Co., L.P.A.  
1940 E. 6<sup>th</sup> Street – 6<sup>th</sup> Floor  
Cleveland, OH 44114  
(216) 771-3800

Translation

PATENT COOPERATION TREATY  
PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY  
(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference <b>LTS 2003/003 PCT</b>	<b>FOR FURTHER ACTION</b>		See Form PCT/IPEA/416
International application No. <b>PCT/EP2004/003748</b>	International filing date (day/month/year) <b>08.04.2004</b>	Priority date (day/month/year) <b>17.04.2003</b>	
International Patent Classification (IPC) or national classification and IPC			
Applicant <b>LTS LOHMANN THERAPIE-SYSTEME AG</b>			

<p>1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of <u>5</u> sheets, including this cover sheet.</p> <p>3. This report is also accompanied by ANNEXES, comprising:</p> <p>a. <input checked="" type="checkbox"/> (<i>sent to the applicant and to the International Bureau</i>) a total of <u>3</u> sheets, as follows:</p> <p><input checked="" type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).</p> <p><input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.</p> <p>b. <input type="checkbox"/> (<i>sent to the International Bureau only</i>) a total of (indicate type and number of electronic carrier(s)) _____, containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).</p> <p>4. This report contains indications relating to the following items:</p> <table> <tr> <td><input checked="" type="checkbox"/></td> <td>Box No. I</td> <td>Basis of the report</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. II</td> <td>Priority</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. III</td> <td>Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. IV</td> <td>Lack of unity of invention</td> </tr> <tr> <td><input checked="" type="checkbox"/></td> <td>Box No. V</td> <td>Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. VI</td> <td>Certain documents cited</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. VII</td> <td>Certain defects in the international application</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. VIII</td> <td>Certain observations on the international application</td> </tr> </table>	<input checked="" type="checkbox"/>	Box No. I	Basis of the report	<input type="checkbox"/>	Box No. II	Priority	<input type="checkbox"/>	Box No. III	Non-establishment of opinion with regard to novelty, inventive step and industrial applicability	<input type="checkbox"/>	Box No. IV	Lack of unity of invention	<input checked="" type="checkbox"/>	Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement	<input type="checkbox"/>	Box No. VI	Certain documents cited	<input type="checkbox"/>	Box No. VII	Certain defects in the international application	<input type="checkbox"/>	Box No. VIII	Certain observations on the international application
<input checked="" type="checkbox"/>	Box No. I	Basis of the report																						
<input type="checkbox"/>	Box No. II	Priority																						
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<input type="checkbox"/>	Box No. VII	Certain defects in the international application																						
<input type="checkbox"/>	Box No. VIII	Certain observations on the international application																						

Date of submission of the demand	Date of completion of this report
Name and mailing address of the IPEA/EP	Authorized officer
Facsimile No.	Telephone No.

## INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

PCT/EP2004/003748

## Box No. I Basis of the report

1. With regard to the language, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.

This report is based on translations from the original language into the following language \_\_\_\_\_, which is the language of a translation furnished for the purposes of:

international search (Rule 12.3 and 23.1(b))  
 publication of the international application (Rule 12.4)  
 international preliminary examination (Rule 55.2 and/or 55.3)

2. With regard to the elements of the international application, this report is based on (replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report):

the international application as originally filed/furnished  
 the description:  
 pages 1-16 \_\_\_\_\_ as originally filed/furnished  
 pages\* \_\_\_\_\_ received by this Authority on \_\_\_\_\_  
 pages\* \_\_\_\_\_ received by this Authority on \_\_\_\_\_  
 the claims:  
 nos. \_\_\_\_\_ as originally filed/furnished  
 nos.\* \_\_\_\_\_ as amended (together with any statement) under Article 19  
12.02.2005 with letter  
 nos.\* 1-11 \_\_\_\_\_ received by this Authority on of 10.02.2005  
 nos.\* \_\_\_\_\_ received by this Authority on \_\_\_\_\_  
 the drawings:  
 sheets 1/1 \_\_\_\_\_ as originally filed/furnished  
 sheets\* \_\_\_\_\_ received by this Authority on \_\_\_\_\_  
 sheets\* \_\_\_\_\_ received by this Authority on \_\_\_\_\_  
 a sequence listing and/or any related table(s) – see Supplemental Box Relating to Sequence Listing.

3.  The amendments have resulted in the cancellation of:

the description, pages \_\_\_\_\_  
 the claims, nos. \_\_\_\_\_  
 the drawings, sheets/figs \_\_\_\_\_  
 the sequence listing (specify): \_\_\_\_\_  
 any table(s) related to sequence listing (specify): \_\_\_\_\_

4.  This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

the description, pages \_\_\_\_\_  
 the claims, nos. \_\_\_\_\_  
 the drawings, sheets/figs \_\_\_\_\_  
 the sequence listing (specify): \_\_\_\_\_  
 any table(s) related to sequence listing (specify): \_\_\_\_\_

\* If item 4 applies, some or all of those sheets may be marked "superseded."

## INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

PCT/EP2004/003748

Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement	
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## 1. Statement

Novelty (N)	Claims	1-11	YES
	Claims		NO
Inventive step (IS)	Claims	1-11	YES
	Claims		NO
Industrial applicability (IA)	Claims	1-11	YES
	Claims		NO

## 2. Citations and explanations (Rule 70.7)

1. This report makes reference to the following documents:

D1: WO 01/78678 A (JENKINS DELYTH MYFANWY; KYTE KENNETH EUGENE (US); PHILLIPS JENNIFER E) 25 October 2001

D2: WO 02/34200 A (LOHmann THERAPIE SYST LTS; DEGEN ANJA (DE); THEOBALD FRANK (DE) 2 May 2002

D3: US-B-6 361 7901 (ROLF DAVID ET AL) 26 March 2002

2. The active substance plaster according to claim 1 and the method for the production thereof according to claim 11 are novel in view of the prior art (PCT Article 33(2)). D1 discloses transparent, or at least translucent, inconspicuous active substance plasters (cf. figure 1; page 32, lines 20-22). Said plasters can optionally contain dyes. D1 does not, however, disclose an active substance plaster containing a combination of dyes and ingredients or active

## INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

PCT/EP2004/003748

Box No. V

Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

substances that are dyed or change color over time. D2 (cf. page 4, line 33 to page 5, line 5) and D3 (cf. column 6, lines 26-30) likewise each disclose transparent, inconspicuous active substance plasters. D2 discloses a nicotine plaster. The combination of dyes and ingredients that are dyed or change color over time cannot, however, be derived from the disclosure in D2 or D3.

3. The problem to be solved by the present application was that of providing an active substance plaster that masks the coloring or change of color and is also inconspicuous when worn on the skin (cf. description, page 4, lines 1-8). According to the description (cf. page 6, lines 24-36), the problem is solved by providing a transparent or translucent active substance plaster with one (or more) dye(s) that mask the coloring or change in color of the ingredient without compromising the inconspicuousness of the plaster on the skin. The inconspicuousness of the plaster is described by the functional feature (cf. color brightness value) included in claim 1. This solution to the problem of interest is neither suggested nor rendered obvious by the teaching in D1-D3. Therefore, the claimed subject matter also involves an inventive step pursuant to PCT Article 33(3).

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.  
PCT/EP2004/003748

**Box No. V** **Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

4. Claims 2-10 are dependent on claim 1 and therefore likewise meet the PCT requirements for novelty and inventive step.
  
5. The subject matter of claims 1-11 is regarded as industrially applicable and therefore meets the requirements of PCT Article 33(4).